

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 96-6
To Permit Flexible Service Offerings)
In the Commercial Mobile Radio Services)

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COMMENTS OF SPRINT SPECTRUM

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COMMENTS OF SPRINT SPECTRUM¹

Sprint Spectrum, L.P. ("Sprint Spectrum") hereby submits its comments in response to the Federal Communications Commission's ("FCC" or the "Commission") January 25, 1996, Notice of Proposed Rulemaking in the above-captioned matter (the "NPRM").² Sprint Spectrum agrees that commercial mobile radio service ("CMRS") providers should be allowed to offer any service, fixed or mobile, that the market demands, and therefore urges the Commission to adopt the proposals in the NPRM and modify the Table of Frequency Allocations accordingly. Sprint Spectrum further urges, in order that the greatest competitive benefits may be achieved from the flexible use of CMRS spectrum, that fixed wireless services offered by CMRS providers should be classified as CMRS and should be fully eligible for universal service supports.

¹ Sprint Spectrum, L.P. (formerly known as Sprint Telecommunications Venture) is a joint venture formed by subsidiaries of Sprint Corporation, Cox Communications, Inc., Tele-Communications, Inc. and Comcast Corporation to provide nationwide wireless services.

² *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, Notice of Proposed Rulemaking, FCC No. 96-17 (Jan. 25, 1996) ("NPRM").

I. The Commission Should Allow Commercial Mobile Radio Service Providers to Offer Any Fixed or Mobile Service

The Commission correctly foresees that flexibility in the use of CMRS spectrum will speed the introduction of those wireless services that the public values most. The need for such flexibility has become even more apparent, since the NPRM was released, with the passage of the Telecommunications Act of 1996 (the “1996 Act”) -- legislation that will bring an explosion of competition and innovation to the industry.³ In this rapidly-changing environment, CMRS spectrum should be available for a wide range of uses with a minimum of regulatory constraint.

A. Market Forces Will Best Determine the Development of CMRS

While the demand for wireless telephone services has increased dramatically over the past several years, the growth in the kinds of wireless services available and under development has been even more dramatic.⁴ In such a rapidly evolving industry it is difficult to predict which services will be most valued by the public. As the market for wireless services changes, CMRS providers must be able to adapt their service offerings to meet consumer demand. Allowing CMRS companies to provide fixed wireless services will give them the flexibility to meet consumer needs in an increasingly competitive market.⁵

³ Telecommunications Act of 1996, P.L. No. 104-104.

⁴ As the NPRM points out, fixed wireless services will go well beyond wireless local loops and include “wireless Internet access, electronic funds transfers, point-of-purchase credit card verification, and remote monitoring.” *Id.* at ¶ 22.

⁵ The potential for achieving these benefits will only be realized, however, if the Commission mandates reasonable interconnection arrangements -- such as bill-and-keep -- that will enable fixed wireless CMRS to compete effectively with landline local service. For this reason, the Commission’s pending rulemaking in CC Dockets No. 95-185 and No. 94-54, *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, is of crucial importance to this industry.

Nor will spectrum scarcity prevent the realization of these benefits. Digital protocols already can increase system capacity by a factor of ten,⁶ and those technologies are likely to improve dramatically in the future. In addition, personal communications services (“PCS”) and advanced specialized mobile radio (“SMR”) services are only now being implemented and will bring substantial, additional capacity to the CMRS market. Permitting CMRS licensees to use some of their spectrum for fixed wireless service will leave sufficient spectrum available to meet the demand for mobile services.⁷

B. Permitting CMRS Providers to Offer Fixed Services is Consistent With Congressional and Commission Policy

Unrestricted fixed wireless service offerings by CMRS providers are fully supported by both congressional and Commission policy. Congress has given the Commission a specific mandate to encourage the growth of new technologies.⁸ When Congress amended Section 332 of the Communications Act of 1934 to specify competitive bidding requirements and establish regulatory parity in CMRS services, it stated a number of basic objectives for the regulation of CMRS, including (1) the development and rapid deployment of new technologies, (2) the promotion of economic opportunity and competition, (3) the ready accessibility of new and innovative technologies for the American people, and (4) the efficient and intensive use of the

⁶ See, e.g., *Late-1995 Signposts Point Way Toward Industry Trends of 1996*, Wireless Business and Finance, January 3, 1996 (“But in the Dynamic field of wireless technology, the CDMA air interface -- and its promise of offering 10 times the capacity of analog cellular -- no doubt will command the limelight right through 1996.”); *KMT Launches CDMA Service: Korea to License Up to Five PCS Operators*, PCS Week, January 17, 1996 (“Initial results have substantiated CDMA’s 10 to one spectrum efficiencies over KMT’s existing analog advanced mobile phone system”).

⁷ Moreover, the market is the best determinant of where spectrum is “scarcest” and therefore most valuable. If the use of some portion of the CMRS spectrum for fixed wireless service is more profitable than the use of that same spectrum for a mobile service, this fact reflects the verdict of consumers that the spectrum is needed -- i.e., valued -- more in the former application than in the latter. The market’s judgment is likely to be far more accurate than a regulatory body’s attempt to predict, in advance, where the resource will be most needed.

⁸ See 47 U.S.C. § 157.

electromagnetic spectrum.⁹ Congress intended to promote growth and competition in the industry and ensure that “economic forces -- not disparate regulatory requirements -- shape the development of the CMRS marketplace.”¹⁰

Commission policies and goals with respect to CMRS correctly mirror these congressional goals. For example, in the Regulatory Treatment of Mobile Services proceeding, the Commission stated that:

Our national economy is strengthened and the public interest is served to the extent we are successful in promoting and achieving the broadest possible access to wireless networks and services by all telecommunications users. The economy can be fortified by a ubiquitous communications web that extends access to a multiplicity of transmission capabilities to a wide community of business and residential users.¹¹

As the Commission continues its efforts to bring its policies and procedures into line with the competitive realities of today’s marketplace, it will be even more critical that it examine its rules to ensure that competitive innovation is not stifled by regulation. The service flexibility offered by the NPRM proposals is an important step in this direction.

II. Fixed Applications Of CMRS Spectrum Should Be Regulated As CMRS

Where CMRS licensees offer fixed services in addition to standard mobile services, those fixed services should be subject to the same, carefully-fashioned scheme of forbearance regulation that the Commission applies to mobile CMRS offerings.¹² To the extent the proposed

⁹ Omnibus Budget Reconciliation Act of 1993, P.L. No. 103-66, Title VI § 6002, 107 Stat 312, 388 (1993) (the “Budget Act”).

¹⁰ *NPRM* at ¶ 19.

¹¹ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1421 (1994).

¹² Extension of CMRS spectrum to fixed wireless applications should require only technical changes to the existing rules. For example, § 22.323(d) of the Commission’s rules requires notification to the Commission when a CMRS licensee intends to offer incidental services. Since fixed services no longer will be “incidental” if the proposals in the

fixed services are offered to the public, for profit and on an interconnected basis, they should be regulated in the same way as other CMRS services. To the extent any of those services fail to meet these elements of the statutory definition of CMRS, their providers can apply to the Commission for Private Mobile Radio Service classification. There is no reason to violate the plain intent of Congress, calling for symmetrical regulation of CMRS services, by creating a different scheme of regulation for fixed services offered over CMRS frequencies.¹³

The Commission's decision to preempt state entry and rate regulation of CMRS also should apply to fixed wireless services offered by CMRS providers.¹⁴ There is no prospect, for the foreseeable future, that these services will qualify for the statutory exception to the Commission's authority to preempt state regulation of CMRS -- *i.e.*, "where such services are a substitute for land line telephone exchange service for a *substantial portion of the communications* within such state."¹⁵ The Commission should make it clear, therefore, that state entry and rate regulation will not be allowed to stifle the rapid growth of this highly beneficial use of mobile spectrum.¹⁶

NPRM are adopted, this section should not be retained. As the NPRM notes, other conforming amendments also may be required. *See* NPRM at n. 32. The proposals should not present technical compatibility or interference problems requiring changes to the rules.

¹³ Nor is there any reason to burden the fixed services with tariffing or other obligations not imposed on CMRS services under the Commission's "forbearance" approach. The CMRS providers will not control any bottleneck facilities through which their fixed services are provided, and will compete with services offered by incumbent LECs. As in their mobile markets, therefore, the CMRS providers plainly will not possess market power in the fixed wireless services market.

¹⁴ The Commission's preemption authority for CMRS services is defined in the Budget Act, *supra* at 107 Stat. 394.

¹⁵ *Id.* (emphasis added).

¹⁶ The authority of states to regulate entry has, of course, already been limited for all telecommunications services by the 1996 Act. Telecommunications Act of 1996, *supra* at § 101.

III. CMRS Licensees Offering Fixed Services Should be Eligible for Universal Service Supports

Under Section 102 of the 1996 Act, any carrier that agrees to assume universal service responsibilities and is designated as an “eligible carrier” for a service area may receive universal service support on the same basis as the incumbent local exchange carrier.¹⁷ The 1996 Act does not limit eligible carriers to any particular technology or method of delivering service to customers. In this respect, The 1996 Act is entirely consistent with the Commission’s determination, announced in the pending universal service proceeding, that high-cost supports should be technology-neutral:

Efficient investment and operation requires that assistance be delivered on a basis that is technology-neutral, in order to avoid encouraging investment in specific types of facilities or technologies when other means could deliver local service at lower cost.¹⁸

Consistent with the 1996 Act and principles previously proposed by the Commission, CMRS licensees that provide wireless local loop service, and that elect to be treated as eligible carriers under the 1996 Act, should be eligible to participate in the universal service system on the same basis as other providers of telecommunications services. Sprint Spectrum further urges that in implementing the universal service provisions of the 1996 Act, the Commission adopt a competitively neutral mechanism -- such as the use of portable, high cost credits -- that will

¹⁷ *Id.* at § 102.

¹⁸ *Amendment of Part 36 of the Commission’s Rules and Establishment of A Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking and Notice of Inquiry, FCC No. 95-282, at ¶ 6 (July 13, 1995) (hereinafter “USF NPRM”). Sprint Telecommunications Venture (“STV”) (now known as Sprint Spectrum) supported this position in its Reply Comments to the USF NPRM. USF NPRM Reply Comments of STV at 4.

support local service obtained from any eligible carrier, including eligible carriers providing local service through fixed wireless facilities.¹⁹

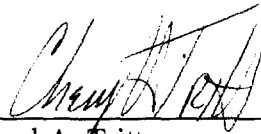
Technology-neutral eligibility for Universal Service Fund ("USF") assistance will stimulate competition in high-cost areas where incumbent providers do not necessarily have the incentive to develop new technologies or otherwise improve efficiency. Such a policy also would promote the Commission's general statutory mandate under Section 157 of the Communications Act to encourage the provision of new technologies and services to the public.

CONCLUSION

Sprint Spectrum urges the Commission to adopt the proposals outlined in the NPRM to ensure a robust and innovative CMRS marketplace well into the future.

Respectfully submitted,

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¹⁹ See, e.g., USF NPRM Comments of Jones Intercable (administer USF in a neutral manner and make support available to any service provider); Comments of NCTA at 6; Comments of MCI at 9 ("Any universal service support mechanism must be provider-neutral.").

CERTIFICATE OF SERVICE

I, Kimberly E. Thomas, do hereby certify that the foregoing **COMMENTS OF SPRINT SPECTRUM, L.P.** was hand delivered on this 1st day of March, to the following:

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